1948

File No. Leg. II/48

Legal **DEPARTMENT**

13 **BRANCH**

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Subject:—

Rules and Notifications under the Land Acquisition Act, 1894.

P-17
(F)

C O N T E N T S.

Legal Department File No. Leg. II/48.

Sr.No.	R.T./O.No.	Subject.	Pages.
		Rules & Notifications under the Land Acquisition Act, 1894.	
(1)	8164 1/6/48.	Sec. 3(c) -Appointment of a Spl Land Acquisition Officer & the Addl. Sp. L.A. Officer each to perform the functions of the Collector under——— and then to direct one of them to take orders for the acquisition of land in any Particular case.	
(2)	7992 25/8/48	Erratum in GMRD No. 6604/45 of 1-4-48	3-5
(3)	9101 24/9/48	Sec. 4 -Notification under.	7-13 (P.) not copied
	9153 27/9/48	———Do———	
(4)	8493 4/9/48	Sec. 7(3)(c) -Notification under.	15-17
(5)	8712 14/9/48	Sec.7(3)(c) -Notification under.	19-21
(6)	8330 30/8/48	Secs.5A,6- Held that it will not be proper to allow Govt. to change the Purpose for which the Land was acquired.	23-24
(7)	6974 26/7/48	Sec. 4 & 6 -Amending the GMRD No. 3.112 dated 10/5/47 & issuing fresh notifn. under——— as Ramdurg State was not a part of Bombay Province.	25
(8)	10628 11/11/48	Sec. 4 -Notifn. under	27-29
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B.K.S. 21/5/ 5e.

23/5

Office of the R.L.A.

There appears no objection to appointing the Special Land Acquisition Officer and the Additional Special Land Acquisition Officer each to perform the functions of the Collector under section 3(c) and then to direct one of them to take orders for the acquisition of the land in any particular case. But the direction to take orders for each of the said officers will have to be separate for each case or a group of cases. Two officers cannot be given directions for the same case or the same group.

The second question is whether one notification in respect of all the 28 land acquisition cases in which proceedings have been taken by the Additional Special Land Acquisition Officer, Ahmedabad, instead of the Special Land Acquisition Officer, Ahmedabad, will serve the purpose. As the additional Special Land Acquisition Officer is to be appointed to perform the functions of a Collector under section 3(c) in all the 28 cases there appears no objection to issue one notification in respect of all such cases on the lines of G.N., R.D., No.10109/39, dated the 8th January 1948.

As regards the third question, the circular at page 19 ante is in order.

Sd/- J.R.D.
31/5
Additional Secretary to Government.

U.R. to R D., No. 5164 , dated the 1st June 1948.

B.K.S. 21/5/ 4c.

Legal Department.

A revised draft x erratum in place of the one at page 57 is sent herewith.

2. The draft notification at page 61 as amended is in order. It is necessary to specify in that notification that the area now required is the area under huts in the two survey numbers indicated therein.

Sd/- T.R.D.
21/8
Additional Secretary to Government.

U.R. to R.D.,No. 7992 , dated the 23rd August 1948.

B.K.S. 21/5/ 4c.

Revenue Department.

Bombay Castle, August 1948.

Erratum.

Land Acquisition Act, 1894.

No.6604/45.- In exercise of the powers conferred by section 6 of the Land Acquisition Act, 1894 (I of 1894), the Government of Bombay is pleased to amend the Government Notification in the Revenue Department, No. 6604/45, dated the 1st April 1948, published at page 1430 of Part I of the Bombay Government Gazette, Extraordinary, dated 1st April 1948 as follows, namely:

In the Schedule to the said notification, in the third column thereof -

(1) against Survey No. 169 pt., for "280-20-0" read"276-21-0 (exclusive of the area of 3 A - 39 G in aggregate under huts)"

(2) against Survey No. 190 pt., for "175-0-0" read "173-13-8 (exclusive of the area of 1 A 26 G 8 a in aggregate under huts)".

By order of the Governor of Bombay,

Secretary to Government.

B.R.S. 21/5/ 4c.

~~1809~~ 9

NOTIFICATION.

Revenue Department,

Bombay Castle, 1948.

Land Acquisition Act, 1894.

No. .- In exercise of the powers conferred by section 4 of the Land Acquisition Act, 1894 (I of 1894), the Government of Bombay is pleased to amend the Government Notification in the Revenue Department No.S.112, dated the 10th May 1947, as follows:-

In the said notification, entry at serial No.II shall be deleted.

By order of the Governor of Bombay,

Assistant Secretary to Government.

B.K.S. 21/5/ 4c.

Legal Department.

The R.L.A's opinion No. 6974, dated the 26th July 1948 has answered all the questions raised at 'A' in R.D. note at pages 17-18. The first question raised was whether in the circumstances stated in the R.D. note at page 17 ante, there was any objection to the acquisition proceedings being taken in respect of land required by Government itself for a public purpose since the Ramdurg State has merged in the Indian Dominion. The R.L.A. replied that the notification No. S.112, dated 10-5-1947 (page 1) in so & far as it related to the land at item II was illegal as the Provincial Government was not competent in the year 1947 to acquire land for an Indian State for a State purpose. R.D. was therefore advised to cancel the said notification in so far as it related to the said land. The R.L.A. also advised that "it is necessary to issue fresh notifications now under section 4 as well as under section 6 of the Act for whatever area required for the acquisition. It impliedly suggested that a fresh notification for acquiring 32 acres of land notified under R.D. notification No. S.112, dated 10-5-1947 and 30 acres of additional land as proposed by the Collector, Bijapur at page 7 can now be issued by Government for Government purpose, the administration of Ramdurg State having been now vested in the Provincial Government. In view of the above legal position the second question raised by the R.D. of taking any agreement under the Land Acquisition Act does not arise.

2. The notifications at pages 13 and 15 ante are in order.

3. The draft notification at page 25 is based on the model form specified in para. 303 of the Land Acquisition Manual. That model form is intended

to be used when a notification under section 4 has been validly issued. Since in the case under consideration, it is clear that the order No.S.112 dated the 10th May 1947 in so far as it related to the entry II is illegal and ultra vires, it would be better to cancel that entry from the said notification. A revised draft form of such notification is sent herewith.

Sd/- J.R.D.
22/9
Additional Secretary to Government.

U.R. to R.D., No. 9101 , dated the 24th September 1948.

BKS. 21/5/ 4c.

Legal Department.

The lands proposed to be acquired are described in the notification under section 4 as "bounded on all sides by the village lands of ARE already notified for acquisition under section 4 of the Land Acquisition Act". Since all the village lands of ARE are already acquired now under section 6 of the Act, the Revenue Department proposes that instead of the words "bounded on all sides by the village lands of ARE already notified for acquisition under section 4 of the Land Acquisition Act" the words "bounded on all sides by the village lands of ARE already acquired" should be substituted to be consistent with the facts. The amendment suggested by Revenue Department is not necessary. The lands to be specified in the notification under section 6 should be described in the same manner in which they were described in the notification under section 4.

2. It is, however, observed from the proposed draft that it is not clear as to which of the two officers namely, the Assistant Collector or the Deputy Collector in charge of the Thana Taluka, has been directed under section 7 of the Act to take orde for the acquisition of the said lands. As already held in R.L.A's opinion given to R.D. No.5164, dated the 1st June 1948, two officers cannot be given directions for the same case. The Revenue Department should therefore consider which of the two officers mentioned in the penultimate para. of the draft notification shou' be directed under section 7 of the Act to take or' for the acquisition of the land and mention en' such officer in the draft notification at p' 183-187 in R.D.File No.999/45.

Sd/- J.R.D.
24/9

Additional Secretary t'

U.R. to R.D. No. 9153 , dated the 27th

BKS. 21/5/ 4c.

Land Acquisition.

Revenue Department,

Bombay Castle, September 1946.

Land acquisition Act, 1894.

No. 3152/45:- In exercise of the powers conferred by clause (c) of section 3 and section 7 of the Land Acquisition Act, 1894 (I of 1894), the Government of Bombay is pleased to cancel Government notifications in the Revenue Department, No. 3152/41, dated the 2nd March 1942 and 30th March 1942, as follows, namely :-

In the said notifications, -

for the words "the Assistant Special Land Acquisition Officer, Surat, is/are directed" shall be substituted.

By order of the Governor of Bombay,

Assistant Secretary to Government.

Rec. 1/5/46.

Legal Department.

------ draft notification is sent herewith.

2. With reference to the notifications No. 3152/45, dated 2-3-1948 and 30-3-1948 the R.D. has already been advised under L.D.U.R.No.6267 dated 5-7-1948 that the direction m to take order for each of the two officers will have to be separate for each case. Section 7 is of the mandatory character and as there was no specific direction to that effect in the two notifications, none of the officers was competent to take orders for the acquisition of the said lands. The proceedings, if any taken, will have to be started de novo from section 7 onward after the notifications are amended as proposed by R.D.

3. Para 2 of R.D. note.- To remove the vagueness of the model form D.I. printed on p.61 of the L.A. Manual, it is necessary to amend it in the following manner.

An asterick should be shown against the word 'His' appearing in para 4 of the said form and in the margin the following note should be taken.

" * Here insert the name of the Officer intended for the purpose".

Sd/- J.R.D.
2/9
Additional Secretary to Government.

U.R. to R.D., No. 6493 . dated the 4th September 1948.

BRS. 21/5/ 4c.

Legislative Department.

Revised draft notification is sent herewith.

-d/-
13/)
Additional Secretary to Government

U.O. to Govt. No. 71 dated the 14th October 1948.

No. 1/5/ 48.

If the land is not required for the purposes of the Maharashtra University, the fair and proper course will be to withdraw from the acquisition under section 48 of the Land Acquisition Act, 1894, as the possession of the land has not so far been taken. It is true that there has been some difference of opinion on the point whether land acquired for one public purpose can be used by Government for any other purpose. In Gur Das v. Secretary of State 18 C.L.J. 244 the Calcutta High Court has held that when land is acquired for a specific purpose, it is not open to the authorities to use it for quite a different purpose. A contrary view has been held in another case (See Secretary of State v. Amulya Charan A.I.R. (1927) Cal. 874). In view of this conflict R.L.A. has advised that it would be inadvisable to change the purpose for which the land was acquired. (See R.L.A's opinion in G.R. (R.D.) No. 9831, dated 11th October 1939. See also U.R. to R.D. No. 9608, dated 1st November 1940). In this case acquisition proceedings are not complete. If any portion of the land is not required for the purposes of the Poona University as originally proposed, it would be improper to proceed with the acquisition. The proper course will be to withdraw from the acquisition under section 48 of the Land Acquisition Act as stated above. The suggestion that the Land Acquisition Act should be amended to enable Government to use the land acquired for one purpose ~~for one purpose~~ for another is not consistent with the general scheme of the Act. The Act relates to compulsory acquisition. Section 5A was specially inserted in the Act to give an opportunity to any person interested to object to the acquisition. After considering his objections, Government is given power to make a declarati under section 6, which is to be conclusive. If the de tion is to be conclusive, and binding, it cannot be as binding and conclusive against the persons int only. Government should also treat it as bindi

It will not therefore be proper to allow Government to change the purpose for which the land was acquired. In England under the Land Clauses Act of 1845, if the land is not required for the purpose for which it was acquired, it has to be resold to the original owner.

Sd/- J.R.D.
30/8

Additional Secretary to Government.

U.R. to R.D., No. 8330, dated the 30th August 1918.

BKS. 22/5/ 4c.

Legal Department.

The R.D. notification No. S.112, dated 10th May 1947, in so far as it relates to the acquisition of S. No. 96 at Idgal in the Badami Taluka, is not in order and is illegal. The piece of land is being acquired for the construction of a pick up weir in the Ramdurg State. When the notification was issued, the jurisdiction of the Ramdurg State was not handed over to the Government of Bombay. The assumption made in the R.D. notes that the Ramdurg State has become part of the Province of Bombay is entirely incorrect (See R.L.A's opinion No. 2598, dated 15th March 1948). It will, therefore, be necessary to amend the notification of 10th May 1947 and to issue fresh notifications now under section 4 as well as under section 6 of the Land Acquisition Act, for whatever area required for the acquisition.

Id/- J.R.D.
24/7
Additional Secretary to Government.

U.R . to R.D., No. 6974 , dated the 26th July 1948.

BKS. 22/5/ 4c.

Revenue Department,
Bombay Castle, November 1948.

Land Acquisition Act, 1894.

No. .- Whereas it appears to the Government of Bombay that the superstructure on the land specified in the Schedule hereto appended and all rights and interests (if any) existing in favour of private individuals in the said land are likely to be needed for the purposes of the Gujarathi Kelvani Hitavardhak Mandal viz., for a school in the Poona Cantonment;

It is hereby notified under the provisions of section 4 of the Land Acquisition Act, 1894 (I of 1894), that the said superstructure together with all such rights and interests (if any) in the said land is likely to be needed for the purpose specified above.

2. All persons interested in the said superstructure and with said land are hereby warned not to obstruct or interfere with any surveyors or other persons employed upon the said land for the purposes of the said acquisition. Any contract for the disposal of the said structure of of any interest in the said land by sale, mortgage, assignment, lease exchange or otherwise, or any outlay or improvement, made therein without the sanction of the Collector after the date of this notification shall, under section 24 (seventhly) of the said Act, be disregarded by the officer assessing compensation for such parts of the structure and the said land as may be finally acquired.

3. If the Government of Bombay is satisfied that the said superstructure and rights and interests (if any) existing in favour of private individuals in the said land are needed for purpose aforesaid a final notification that

effect under section 6 of the said Act will be published in the Bombay Government Gazette in due course. If the acquisition is abandoned wholly or in part, the same shall be duly notified in the Bombay Government Gazette.

4. Under clause (c) of section 3 of the Land Acquisition Act, 1894, the Government of Bombay is pleased to appoint the Special Land Acquisition Officer, Poona, to perform the functions of a Collector under section 5A of the said Act in respect of the said superstructure and the said land.

SCHEDULE.

District

Cantonment	Building	Approximate area
Cantonment Survey No.		

Boundaries -North South
East and West

By order of the Governor of Bombay,

Assistant Secretary to Government.

DKS. 22/5/ 4c.

Legal Department.

A revised draft notification is sent herewith.

2. It appears from the Collector's report of 16th May 1945 in R.D. File No.57~~39~~39-II that the Gujarathi Kelvani Hitvardhak Mandal is a society registered under the Societies Registration Act, 1860, and therefore a company within the meaning of section 3(e) of the Land Acquisition Act, 1894. It is presumed that the Gujarati Kelvani Hitavardhak Mandal and ~~the~~ the Poona Gujarati Kelvani Mandal referred to in the Collector's report are one and the same bodies.

~~Sd/-~~ L.R.D.
11/11
Additional Secretary to Government.

U.R. to R.D., No. 10628, dated the 11th November 1948

BKS. 22/5/ 4c.

NOTIFICATION.

Revenue Department,

Bombay Castle, December 1948.

Land Acquisition Act, 1894.

No. .-In exercise of the powers conferred by clause (c) of section 3 of the Land Acquisition Act, 1894 (I of 1894), the Government of Bombay is pleased to amend Government Notification in the Revenue Department, No. 6142/45, dated the 5th November 1947, as follows, namely :-

For the words "District Deputy Collector, Nasik Prat" the words "Huzur Deputy Collector, Nasik" shall be substituted.

By order of the Governor of Bombay,

Assistant Secretary to Governmen

BPS. 22/5/ 4c.

Legal Department.

The proposed draft notification at page 117 for cancellation of corrigendum No.6142/45, dated the 31st May 1948 is not legally in order. A revised draft notification is sent herewith.

Sd/- J K-D
6/12
Additional Secretary to Government.

U.H. to R.D., No. 11585 dated the 7th December 1948.

BRS. 22/5/ 4c.